APPENDIX

28 U.S.C. § 1254 Court of Appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

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35 U.S.C. § 292 *False marking*

(a) Whoever, without the consent of the patentee, marks upon, or affixes to, or uses in advertising in connection with anything made, used, or sold by him, the name or any imitation of the name of the patentee, the patent number, or the words "patent," "patentee," or the like, with the intent of counterfeiting or imitating the mark of the patentee, or of deceiving the public and inducing them to believe that the thing was made or sold by or with the consent of the patentee; or

Whoever marks upon, or affixes to, or uses in advertising in connection with any unpatented article, the word "patent" or any word or number importing that the same is patented, for the purpose of deceiving the public; or

Whoever marks upon, or affixes to, or uses in advertising in connection with any article, the words "patent applied for," "patent pending," or any word importing that an application for patent has been made, when no application for patent has been made, or if made, is not pending, for the purpose of deceiving the public—

Shall be fined not more than $500 for every such offense.

(b) Any person may sue for the penalty, in which event one-half shall go to the person suing and the other to the use of the United States. (R. S. 4901; 35 U. S. C., 1946 ed., 50.)

15 U.S.C. § 13 Discrimination in price services or facilities—Price; selection of customers

(a) It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing contained in sections 12, 13, 14-21, and 22-27 of this title shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing contained in sections 12, 13, 14-21, and 22-27 of this title shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That noth-

ing contained in sections 12, 13, 14-21, and 22-27 of this title shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,983

HARDINGE COMPANY, INCORPORATED

v.

JONES & LAUGHLIN STEEL CORPORATION, *Appellant*

Appeal From the United States District Court for the Western District of Pennsylvania.

Argued February 2, 1960

Before GOODRICH, HASTIE and FORMAN, *Circuit Judges*.

Opinion of the Court

(Filed February 15, 1960)

PER CURIAM

This is an appeal from a judgment of the District Court for the Western District of Pennsylvania which denied award of attorney fees in a patent case. The suit was the usual type for a patent infringement. The case went through the process of discovery and there was a pre-trial conference and a pre-trial order. Facts appeared on which the defendant based a claim of misuse of patents and other matters. Following the pre-trial conference, the plaintiff

moved to dismiss and the court granted the motion to dismiss but with prejudice. The court denied the defendant counsel fees under 35 U.S.C.A. § 285. Such an award is necessarily one based upon the court's discretion and its consideration of what constitutes an exceptional case under the statute cited. We do not think that the exercise of the court's discretion against such an award in this instance is one which we can say constituted an abuse of that discretion. The judgment will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.